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In re application of

Stephanie Andes et al.

Serial No. 10/811,867

Filed: March 30, 2004

For: MULTILAYER PIGMENTS BASED ON COATED METAL PLATELETS

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DECISION ON
PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed October 15, 2004.

The instant application is a continuation of Application 10/453,479. A final office action was mailed to Applicants in that application on August 26, 2003. The instant application was filed on March 30, 2004. On October 15, 2004, a first action final office action was mailed. The examiner stated in the office action that all claims were drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next office action if they had been entered in the earlier application.

On December 10, 2004, the instant petition was timely filed to formally request the withdrawal of the finality of the October 15, 2004 office action. The Office apologizes for the delay in processing the instant petition.

DECISION

As set forth in the petition, the standard for making an Office action final is set forth in section 706.07(b) of the MPEP which states:

706.07(b) Final Rejection, When Proper on First Action

The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

In the instant application, the examiner has rejected claim 11 (previous claim 17 in the '479 application) under 102(b) as being anticipated by Schmid et al. ('486). Additionally, claim 11 is also rejected under 35 USC 103 as being obvious over Schmid et al. ('504). However, it is noted that in the parent application, claim 17 (claim 11 in the current application) was only rejected under 35 USC 103 as being obvious over Schmid et al. ('486) and ('504). No rejection of this claim was made under 35 USC 102 as in the present application. Claim 11 of the instant

application has been rejected using a new ground of rejection that was not present in the parent application and therefore, the finality of the office action is improper.

Accordingly, the petition is **GRANTED**.

Because of the delays by the Office in granting this petition, the examiner is directed to send out a new non-final office action.



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